IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the ESTATE OF WILLIAM D. EVANS, DECEASED. LOWELL H. HENRY, Personal Representative of the Estate of William D. Evans, Plaintiff/Appellee, v. DORA EVANS, an unmarried woman, Defendant/Appellant.	2 CA-CV 2006-0184 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. PB20031182

Honorable Clark W. Munger, Judge

AFFIRMED

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V Á S Q U E Z, Judge.

¶1 In this probate action, appellant Dora Evans appeals from the judgment entered in favor of Lowell Henry, the personal representative of her deceased husband's estate. Dora contends the trial court abused its discretion in failing to find Lowell's various fraud claims against her barred by the applicable statute of limitations and in imposing double damages on those claims under A.R.S. § 14-3709(D). Finding no abuse of discretion, we affirm.

I. Facts and Procedural Background

¶2 "We view the evidence and reasonable inferences therefrom in the light most favorable to sustaining the trial court's judgment." *Pelletier v. Johnson*, 188 Ariz. 478, 480, 937 P.2d 668, 670 (App. 1996). William and Dora Evans were married in November 1990, and the marriage continued until William's death on May 20, 2000. William left a will nominating his nephew, Lowell Henry, as his personal representative (PR) and devising the residue of his estate to a revocable living trust he had established five years after marrying Dora. William was the sole grantor, trustee, and named beneficiary of his trust until his death. Upon his death, Lowell administered the trust as successor trustee. The trust's residuary beneficiaries were Dora; Lowell; William's two sons from a previous marriage, Jerry and Douglas Evans; and another nephew, Bradley Gilpen.

¶3 William and Dora had signed a premarital agreement which provided that each spouse's property owned prior to the marriage would remain separate property and that the future earnings of each spouse would also be separate property. At his death, William owned real property in California and real and personal property in Arizona. Lowell was first appointed executor of William's estate in probate proceedings initiated in California. After learning of "facts that le[]d him to believe that [Dora] had possession of certain assets that were or should have been assets of the probate estate or trust estate," Lowell initiated these ancillary probate proceedings and was appointed PR of the Arizona estate.[1]

¶4 In November 1994, William, Dora, and two other individuals had purchased some buildings in Pima County that they intended to develop into apartments ("Evans Apartments"). William and Dora owned as tenants in common an undivided one-half interest in the apartments, which they held as separate property. Following William's death Lowell asked Dora about the "title to Evans Apartments." On August 8, 2000, Dora responded with a letter claiming she had acquired William's interest in the Evans Apartments as the surviving joint tenant. According to Dora, they had transferred their separate interests to a joint tenancy with right of survivorship by a deed apparently signed and notarized on January 27 and recorded on June 29, 2000. Although she also enclosed one page of the joint tenancy deed, the parties dispute which page Lowell actually received.

[1]William was a resident of Pima County at the time of his death. Lowell resides in Oregon.

Because William had told Lowell his interest in Evans Apartments would become a trust asset upon his death, Lowell was somewhat suspicious of Dora's claim and requested a copy of the complete joint tenancy deed from her. By letter dated August 25, 2000, Dora sent Lowell her affidavit attesting to the transfer of William's share of the property into joint tenancy. She also claimed to have included with the letter a copy of the joint tenancy deed, but according to Lowell the copy had not been included. Lowell then asked friends in Pima County to obtain and send him a copy of the deed. The friends initially sent a copy of the original deed conveying the Evans Apartments to William, Dora, and their partners, and it was not until around February 2001 that Lowell received a copy of the entire joint tenancy deed. Then, in August 2003, Dora's son, Rick James, contacted Lowell and informed him that Dora had forged the joint tenancy deed, along with other documents, and had had the deed falsely notarized after William's death.

¶5 On November 10, 2003, Lowell filed a complaint against Dora in the ancillary proceedings alleging, inter alia, that she had "falsely represented" William's signature on the joint tenancy deed, thereby fraudulently acquiring William's separate interest in the Evans Apartments. The complaint further alleged that Dora had converted William's personal property, concealed a debt she owed the estate, and withheld rents the estate had been entitled to receive. In response, Dora asserted that the statute of limitations barred Lowell's fraud claims and that, in any event, she had actually repaid the debt. The trial court found the fraud claims were not barred by the statute of limitations and entered judgment against

Dora on all claims. It also awarded double damages for each claim pursuant to A.R.S. § 14-3709(D). Dora's timely appeal followed.

II. Standard of Review

¶6 The applicability of a statute is an issue of law we review de novo. *AAA Cab Serv., Inc. v. Indus. Comm'n*, 213 Ariz. 342, ¶ 2, 141 P.3d 822, 823 (App. 2006). That determination necessarily hinges upon a resolution of the underlying facts. "Findings of fact made pursuant to Rule 52(a)[, Ariz. R. Civ. P.,] will not be set aside on appeal unless they are clearly erroneous or not supported by substantial evidence." *Nordstrom, Inc. v. Maricopa County*, 207 Ariz. 553, ¶ 18, 88 P.3d 1165, 1170 (App. 2004). Substantial evidence is evidence which would permit a reasonable person to "draw a conclusion" reached by the trial court. *Matter of Estate of Mustonen*, 130 Ariz. 283, 285, 635 P.2d 876, 878 (App. 1981).

III. Discussion

A. Statute of Limitations

Evans Apartments

¶7 In his complaint, Lowell alleged Dora had "falsely represented" William's signature on the joint tenancy deed "to the detriment of [William's] estate and the beneficiaries of his estate." As she did below, Dora contends Lowell's fraud claims were barred by the three-year statute of limitations applicable to fraud claims under A.R.S. § 12-543. The complaint was filed on November 10, 2003; therefore, if Lowell discovered or

"with reasonable diligence could have discovered" the fraud prior to November 10, 2000, his claims would be barred by the statute of limitations. *See Mister Donut of Am., Inc. v. Harris*, 150 Ariz. 321, 323, 723 P.2d 670, 672 (1986); *see also* A.R.S. § 12-543(3) (claims do not accrue "until the discovery by the aggrieved party of the facts constituting the fraud").

¶8 We first address Dora's challenge to the trial court's factual finding that Lowell had not seen the page of the joint tenancy deed bearing William's signature until early 2001. She asserts the trial court's finding that Lowell had initially received a different page is against the weight of the evidence. The trial court's ruling was based solely on Lowell's testimony. Although Lowell's testimony was arguably not very clear about which page of the deed he had received, he did specifically refer to a county or state seal he knew should have been affixed to the document that was not on the page he had received. He further testified that he had not received the signature page until 2001 and, when he had finally received it, had believed William's signature had been forged.

¶9 Lowell's testimony was corroborated by the deed itself. The first page of the deed, the signature page, contained the Pima County seal at the top while the second page bore only a notary seal. Based on Lowell's testimony that the page he received was missing the county or state seal and that Dora had not sent him the page with William's signature, the trial court's determination that Lowell did not receive the signature page until 2001 was based on substantial evidence and not clearly erroneous. *See Nordstrom*, 207 Ariz. 553, ¶ 18, 88 P.3d at 1170; *see also Imperial Litho/Graphics v. M.J. Enters.*, 152 Ariz. 68, 72,

730 P.2d 245, 249 (App. 1986) (appellate court defers to trial court's determination of witness credibility).

¶10 Dora next argues the statute of limitations began to run on August 8, 2000, the date she first notified Lowell in writing that she had acquired William's interest in the Evans Apartments. The statute of limitations commences upon "the discovery by the aggrieved party of the facts constituting the fraud." A.R.S. § 12-543(3). As we have noted, this includes "when the defrauded party discovers or with reasonable diligence could have discovered the fraud." *Mister Donut*, 150 Ariz. at 323, 723 P.2d at 672. As Dora correctly points out, a cause of action for fraud may accrue "before a person has actual knowledge of the fraud or even all the underlying details of the alleged fraud." *Id.* However, the running of the statute of limitations may be tolled by the defendant's active concealment of the wrongdoing. *See Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 130, 412 P.2d 47, 63 (1966); *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 162, 871 P.2d 698, 709 (App. 1993). "Ordinarily, when the cause of action accrues is a question for the finder of fact"—in this case, the trial court. *Alaface v. Nat'l Inv. Co.*, 181 Ariz. 586, 590, 892 P.2d 1375, 1379 (App. 1994).

¶11 The trial court found that Dora had not only forged the joint tenancy deed but had also concealed her wrongdoing. Thus, the court concluded, "the earliest date that [Lowell] is chargeable with the knowledge of the fraud and the earliest date that with

reasonable diligence he could have discovered the forgery and fraud regarding the Deed was in early 2001 when he received the signature page of the forged deed."

¶12 But Dora contends "[t]he statute of limitations on [Lowell's] fraud claim commenced when [he] first suspected that the Evans Apartments had not been placed into joint tenancy." In any event, she claims, the recording of the deed on June 29, 2000, had placed him on constructive notice of the claim. Furthermore, she asserts, her actions cannot be considered acts of concealment because she took no action to "prevent[] [Lowell] from obtaining a copy of the Deed by his own efforts."

¶13 "The wrongful concealment sufficient to toll a statute of limitations requires a positive act by the defendant taken for the purpose of preventing detection of the cause of action." *Ulibarri*, 178 Ariz. at 162, 871 P.2d at 709; *see also Tovrea*, 100 Ariz. at 130, 412 P.2d at 63. In this case, Dora first asserted she had acquired William's interest in the Evans Apartments in her letter of August 8, 2000, when she informed Lowell of her interest and purported to enclose the full joint tenancy deed for his review. However, as the trial court determined, the enclosure did not include the page of the deed bearing William's signature. After Lowell notified Dora that the signature page was missing, she sent him another letter enclosing her affidavit, in which she asserted William's interest in the apartments belonged to her. But once again she failed to include the deed in her second letter. Furthermore, Lowell testified that Dora had also told him she and William had worked out an agreement that she would receive William's interest in the Evans Apartments

upon his death in exchange for relinquishing her rights to other trust assets. However, when Lowell responded with a letter asking Dora to execute and return a notarized relinquishment of her rights under the trust, she refused.

¶14 Together, Dora's actions demonstrate a concerted effort to conceal her forgery and fraud regarding the deed. She had repeatedly lied to Lowell, telling him she and William had agreed she would receive his interest in the apartments upon his death; she did not send the full copy of the deed, despite twice telling Lowell she would; and she had signed a false affidavit attesting to the transfer of William's interest to her. It can reasonably be inferred that Dora took these actions to discourage Lowell's further investigation into the joint tenancy deed and, in doing so, attempted to conceal her wrongdoing. Thus, the trial court did not abuse its discretion in finding the statute of limitations did not begin to run until early 2001, when Lowell received actual notice of the forgery. *See Amfac Distribution Corp. v. Miller*, 138 Ariz. 155, 156 n.1, 673 P.2d 795, 796 n.1 (App. 1983) (recognizing cause of action could accrue but statute of limitations could be tolled by fraud or concealment), *citing Jackson v. Am. Credit Bureau, Inc.*, 23 Ariz. App. 199, 202, 531

P.2d 932, 935 (1975). For this reason, Dora's alternative argument that Lowell received constructive notice more than three years before filing suit also fails.[2]

¶15 In any event, the cases on which Dora relies do not support her contention that Lowell possessed sufficient information to trigger the statute of limitations before he had received a full copy of the deed with William's signature in 2001. In *Mister Donut*, despite the fact that a franchisee, Harris, had known for more than three years before filing his fraud claim that the franchise had failed to meet expectations, our supreme court held the statute of limitations did not begin to run until he had actually learned of the restrictive covenant that formed the basis of the claim. 150 Ariz. at 324, 723 P.2d at 673. The court concluded Harris had reasonably relied on the franchisor's representations that the problem was temporary. *Id*.

¶16 And, in *Coronado Development Corp. v. Superior Court*, 139 Ariz. 350, 351-52, 678 P.2d 535, 536-37 (App. 1984), Division One of this court found the statute of limitations did not begin to run until the real parties in interest were specifically told by a lawyer that they had been defrauded but nevertheless failed to further investigate or bring their claim. Similarly, in *Estate of Delaney v. Elliot*, 819 A.2d 968, 982 (D.C. 2003), the

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[2]Dora relies on *Transamerica Insurance Co. v. Trout*, 145 Ariz. 355, 358, 701 P.2d 851, 854 (App. 1985), for the proposition that recordation of the deed constituted constructive notice of Dora's fraud. However, even if this proposition is true, Dora's concealment of her wrongdoing would have tolled the limitations period until Lowell received actual notice of the fraud in 2001. *See Mohave Elec. Co-Op., Inc. v. Byers*, 189 Ariz. 292, 310, 942 P.2d 451, 469 (App. 1997); *Ulibarri*, 178 Ariz. at 162, 871 P.2d at 709.

court determined the limitations period began to run when the plaintiff had physically seen the decedent's will bearing the date it had purportedly been signed by the decedent. The court found the plaintiff knew the decedent had been physically incapable of signing the will on the day it was purportedly signed. *Id*.

¶17 In each of these cases, the courts held the statute of limitations did not begin to run until the claimants were aware of specific facts that would lead them to suspect fraud. *See Mister Donut*, 150 Ariz. at 324, 723 P.2d at 673; *Coronado*, 139 Ariz. at 351-52, 678 P.2d at 536-37. Here, although what Dora told Lowell contradicted what he had previously been told by William, Dora also had provided a plausible explanation for the discrepancy, which Lowell sought to verify. Due to Dora's concealment of her actions, however, Lowell did not have specific knowledge of fraud until he saw the deed in 2001. *See Mister Donut*, 150 Ariz. at 324, 723 P.2d at 673 (where special relationship exists between two parties, one party may rely on other's representations without investigating truth); *Klinger v. Hummel*, 11 Ariz. App. 356, 359, 464 P.2d 676, 679 (1970) (family ties normally create a confidential relationship); *see also Mayo v. Ephrom*, 84 Ariz. 169, 176, 325 P.2d 814, 818 (1958) (plaintiff who makes only partial investigation and is deceived by representations of adverse party has right to rely on such representations); *Miller v. Boeger*, 1 Ariz. App. 554, 559, 405 P.2d 573, 578 (1965) (general trend of law in fraud cases departs from holding that plaintiff who fails to make own investigation may not recover). Therefore, the trial court did

not abuse its discretion in finding Lowell's fraud claims regarding the Evans Apartments had been timely filed.

Checks and other instruments

¶18 Dora next argues the trial court erred in finding Lowell's claims concerning other forged instruments were not time barred. This claim involves seven separate transactions in which Dora was found to have forged: 1) a letter instructing a California bank not to renew an $80,000 certificate of deposit (CD) and to deposit those funds into William's individual checking account; 2) a check for $80,000 transferring that amount from William's individual account to his and Dora's joint checking account; 3) a check for $2,500 from William's individual account made payable to Dora; 4) an endorsement on a cashier's check for $24,009.25 in proceeds from a CD, made payable to the trust and deposited into the joint account; 5) an endorsement on a cashier's check for $33,982.42, also proceeds from a CD, made payable to the trust and deposited into the joint account; 6) a check for $475.00 to pay an insurance bill; and 7) three interest checks totaling $112.97 deposited into the joint account. The trial court found the earliest date Lowell could be charged with knowledge of the fraudulent nature of these transactions was in 2003, when Dora's son informed Lowell of her forgery and fraud.

¶19 Dora argues Lowell was immediately chargeable with this knowledge when he became executor of William's estate on September 11, 2000, because on that day, "[p]roof that the [documents] may have been forged was available to [him]." She apparently relies

again on *Mister Donut, Coronado*, and *Estate of Delaney*.[3] However, her reliance on these cases is still misplaced. In each of them, as stated above, the courts held the statutes of limitations had not begun to run until the claimants had knowledge of specific facts indicative of fraud. *See Mister Donut*, 150 Ariz. at 324, 723 P.2d at 673; *Coronado*, 139 Ariz. at 352, 678 P.2d at 537; *Estate of Delaney*, 819 A.2d at 981. Thus, as with the forged joint tenancy deed, the relevant question is when Lowell knew or should have known that Dora forged these documents.

¶20 On September 11, 2000, Lowell knew that William's estate contained less money than William had previously told him it contained and that two separate money transfers of $80,000 and $2,500 had been made into the joint account around the time of William's death. At trial, when asked if he "form[ed] any opinion at that time as to whether or not somethin[g] was wrong," he testified he thought something was wrong because these amounts came from William's personal accounts and were deposited in the joint accounts instead of the trust. But he did not, at that time, believe the transactions were fraudulent.

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[3]To support her argument on this issue, Dora states that "the law with respect to [Lowell]'s actions concerning any alleged fraud concerning the checks, letter of instruction, and certificates of deposit, is the same as with his suspicions concerning the Deed, . . . except as it applies to the public notice of the Deed[,]" and refers back to her discussion of case law regarding the previous issue. She does not provide any citation of authority in this section or explain how the different way Lowell received notice of the relevant facts for this issue might affect the legal analysis. However, because it is clear to which cases she is referring, we will not consider the argument waived. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief should contain "argument . . . with citations to the authorities [and] statutes . . . relied on"); *see also Ness v. W. Sec. Life Ins. Co.*, 174 Ariz. 497, 503, 851 P.2d 122, 128 (App. 1992) ("Arguments unsupported by any authority will not be considered on appeal.").

In July 2001, when Lowell filed a petition for instructions in Oregon[4] regarding the $80,000, he sought only to have the amount treated as an advance on Dora's share of the trust; he did not allege fraud. Furthermore, he testified, "the reason that I needed a copy of [the $80,000 check] to start with and I wasn't accusin' anybody of stealin' anything or anything, . . . at that time I was just told that it was my responsibility to recover it for the trust . . . ." Viewed together, these facts demonstrate that, as of September 11, 2000, Lowell knew only that the joint account contained $82,500 that had been transferred from William's personal account and had no reason to believe Dora had committed fraud.

¶21 But Dora concealed the fraudulent nature of these transactions as well. In the Oregon proceedings, she filed two false affidavits attempting to explain why the $80,000 CD and $2,500 check had been transferred to William's and her joint account. And throughout the proceedings she provided false explanations for the other CD transfers and her use of the joint account for personal expenses.

¶22 Lowell testified he became aware of these asset transfers during his investigation between September 2000 and February 2001. However, he did not realize they might have been fraudulent until he requested bank documents in connection with the $80,000 CD transfer, which had not been completed until after William's death. Lowell did not see the signatures that alerted him to the fraud until later. And, it was not until 2003

[4]The situs of the trust was in Oregon.

that Dora's son provided Lowell with an affidavit alleging that Dora had "hidden" proceeds of William's CDs.

¶23 The specific date that Lowell was on notice of Dora's fraud regarding these assets is not entirely clear from the record. However, because Dora had concealed her wrongdoing, the trial court reasonably concluded Lowell could not have had notice before viewing the signatures on these documents. By his testimony, this occurred no earlier than the summer of 2003. A cause of action can accrue but the statute of limitations may nevertheless be tolled due to fraud or concealment. *See Amfac Distribution Corp.*, 138 Ariz. at 156 n.1, 673 P.2d at 796 n.1; *Ulibarri*, 178 Ariz. at 162, 871 P.2d at 709; *see also Tovrea*, 100 Ariz. at 130, 412 P.2d at 63. Therefore, the court did not err in finding Lowell's fraud claims for the asset transfers had been filed within the statute of limitations period.

B. Application of Double Damages

¶24 Lowell filed his complaint against Dora pursuant to A.R.S. § 14-3709, under which a PR is authorized to "maintain an action to recover possession of property or to determine its title." § 14-3709(A). Subsections (B), (C), and (D) of § 14-3709 provide additional remedies when the PR suspects a person "of having concealed, embezzled,

conveyed or disposed of any property of a decedent." The additional remedies include an award of double damages if the PR's suspicions are substantiated. § 14-3709(D).[5]

¶25 The trial court found Dora had "concealed, embezzled, conveyed, or disposed of [William's] property . . . and . . . possessed and had knowledge of deeds, bonds, contracts or other writing[s] which contain[ed] evidence of or tend[ed] to disclose the right, interest or claim of [William] to property in her possession and control." It also found she had destroyed evidence after his death. Dora contends the court incorrectly applied the double damages provisions under subsection (D) to the various instruments relating to the transfer of CDs and other funds, the debts she owed the estate, and rental income from the Evans Apartments, earned after William's death.

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[5]Section 14-3709(D) provides:

> If on examination or from other evidence adduced at [a] hearing it appears that a person has concealed, embezzled, conveyed or disposed of any property of a decedent, or possesses or has knowledge of deeds, . . . contracts or other writings tending to disclose the right, interest or claim of a decedent to any property, . . . the court may order that person to . . . disclose knowledge to the personal representative . . . . The order for the disclosure . . . is prima facie evidence of the right of the personal representative to the property in an action brought for recovery of that property, and a judgment shall be for double the value of the property, or for return of the property and damages in addition to the property equal to the value of the property.

Certificates of deposit and checks

¶26 Dora first argues the trial court erroneously applied double damages to the transfers of $80,000, $24,009.25, and $33,982.42 in CD proceeds and to the three interest checks totaling $112.97 because all were assets of the trust, not the estate, at the time of transfer. Therefore, she asserts they did not constitute property to which William had a personal interest or right, hence double damages under § 14-2709(D) cannot apply. We disagree.

¶27 As of the date of William's death, Dora had forged his endorsement on all three interest checks, cashed in the $33,982.42 CD, and deposited these amounts into the joint account. The $80,000 CD had been deposited into the joint account before William died but did not clear the bank until after his death, and the check for the $24,009.25 in CD proceeds was also not deposited until after his death. Although the trial court found all three CDs had been trust assets at the time of William's death, it nonetheless assessed double damages under § 14-3709. With respect to the $80,000 CD, which was an incomplete transfer, the court held, "Dora cannot now argue that her forged instructions to transfer the trust asset into [William]'s separate checking account did not make the funds subject to probate in his estate an[d] thereby avoid the penalties under A.R.S. § 14-3709."

¶28 Section 14-3709(D) provides for double damages when a person conceals property rightfully belonging to a decedent's estate. However, to be part of the estate, the property concealed must be the "property of the decedent." A.R.S. § 14-1201(16); *see also*

§ 14-3709(D). According to Dora, these transfers cannot be considered property of the decedent because they were trust property when they were transferred. However, § 14-3709(D) authorizes double damages not only for the concealment, embezzlement, conveyance, or disposal of property the decedent personally owns at the time of his death, but also of property to which the decedent has a "right, interest, or claim."

¶29 William was the sole named beneficiary of the trust and retained a "beneficial interest in the trust property," as well as the power to revoke the trust at any time during his life. *See In re Naarden Trust*, 195 Ariz. 526, ¶ 11, 990 P.2d 1085, 1088 (App. 1999). Dora interfered with that interest when she fraudulently conveyed trust property to the joint account. Therefore, with respect to the fraudulent transfers completed while William was alive, the true nature of which Dora failed to disclose pursuant to § 14-3709(D), William maintained a beneficial interest sufficient to trigger the double damages provision, despite the assets' having been earmarked for the trust.

¶30 Furthermore, although Dora had not completed the transfers of the $80,000 and $24,009.25 CDs before William died, she had forged the letters of instruction directing the bank not to renew the CDs and to deposit the proceeds into William's personal checking account. Therefore, before William's death Dora had already committed the fraudulent acts, which included her attempt to dispose of his interest in the CDs. *See* § 14-3709(D) (defendant need not possess more than knowledge of decedent's interest in property to be

liable under statute). Therefore, the fact that the transactions were incomplete when William died is irrelevant to the issue whether Dora is liable for double damages.

¶31 Additionally, the imposition of double damages in this case furthers the purpose of § 14-3709 and the probate code generally. Under A.R.S. § 14-1102(A), the probate code must "be liberally construed and applied to promote its underlying purposes and policies." Section 14-1102(B) provides the purposes and policies of the code include "discover[ing] and mak[ing] effective the intent of a decedent in distribution of his property" and "promot[ing] a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors." § 14-1102(B)(2), (3). In this case, Dora's actions were intended to thwart William's expressed intent for the distribution of his property, and the concealment of her actions prevented a speedy and efficient liquidation and distribution of William's estate. It was therefore not an abuse of discretion for the trial court to assess double damages for Dora's fraudulent transfers of trust assets.

Debts owed to the estate

¶32 Next, Dora argues the trial court erred in assessing double damages for the debt Dora owed William for her share of construction costs incurred in completing the Evans Apartments. She asserts that Lowell's complaint did not claim double damages on these amounts and claims that, in any event, the mere denial of a debt, without a specific act of concealment, does not give rise to double damages.

¶33 First, we note Lowell specifically alleged in count one of his complaint that the provisions of § 14-3709(B) applied to his claims and that he was, accordingly, entitled to double damages under subsection (D). The allegations in count one were specifically incorporated into each of the following claims, and they form the background for each of the specific injuries alleged. This is sufficient to satisfy Arizona's system of notice pleading and provide Dora with a "short and plain statement of the claim[s] showing that [the personal representative] is entitled to relief." Ariz. R. Civ. P. 8(a); *see also Chesley v. Jones*, 81 Ariz. 1, 3-4, 299 P.2d 179, 180 (1956) (finding allegation raised earlier in complaint and incorporated in later paragraph of complaint sufficient to permit consideration of issue raised in later paragraph).

¶34 Second, we disagree with Dora's contention that her conduct falls outside the scope of the statute. She contends "[d]enial of a debt, even in bad faith, does not fall under the letter or spirit of [§ 14-3709]." She suggests that, because she did not actively conceal the documents evidencing the debt, her conduct falls outside the statute. Section 14-3709(D), however, encompasses a broad range of actions, including when a person has "concealed . . . any property of a decedent, or possesses or has knowledge of . . . writings tending to disclose the right, interest or claim of a decedent to any property" and fails to disclose that knowledge.

¶35 During construction of the Evans Apartments, Dora incurred a debt to William of $31,527.58 for her share of the expenses. But at trial, she denied the existence of that

debt. She provided an alternative explanation for the meaning of the "IOU" documents evidencing the debt, explaining that they represented a declining balance, which in the end showed that William actually owed her money.

¶36 On appeal Dora does not challenge the trial court's conclusion that the "IOUs" did not represent a declining balance and that the debt had not been repaid. Based on that unchallenged finding, it was reasonable for the trial court to further conclude that Dora had knowledge of the continuing debt, had not disclosed such knowledge to the court, and in fact had actively tried to conceal it. Thus, the trial court did not abuse its discretion in awarding double damages under § 14-3709(D).

Evans Apartments rents

¶37 Dora contends the trial court abused its discretion in awarding double damages for the rental income earned by the Evans Apartments from William's death on May 20, 2000, "through 2004," claiming that "§ 14-3709(D) does not apply to income accruing after the death of a decedent." Dora asserts that, although § 14-3709(D) refers to claims, rights, and interests of a decedent, it "only refers to claims, rights or interests that existed at the time of the decedent's death." However, she does not provide any authority to support this assertion, and we are aware of none. Moreover, the statute's plain language does not support her position. Section 14-3709(D) merely refers to the "property of a decedent or . . . the right, interest or claim of a decedent to any property." It says nothing of when the

decedent's right to the property may accrue and refers to *any* property in which a decedent may have an interest. *Id*.

¶38 Furthermore, the probate code specifically contemplates that the nature and value of a decedent's property can change during administration of the estate. Section 14-1201(16), defines an estate as "the property of the decedent . . . whose affairs are subject to [the probate code] as originally constituted and as it exists from time to time during administration." "Thus, a decedent's estate is not fixed at the time of his or her death, but rather, includes property existing at that time and throughout the administration of the estate." *In re Estate of Goldman*, 215 Ariz. 169, ¶ 14, 158 P.3d 892, 895 (App. 2007). This court has interpreted the legislature's use of the word "property" in § 14-1201(16) not to "exclude income or property appreciation [but to] impl[y] that such increases should be included in the estate." *Id.* We see no reason to interpret the legislature's use of the word "property" in § 14-3709(D) any differently. That section protects a decedent's property and any claim, right, or interest in property the decedent might have. Income accruing to a decedent's estate after his or her death is undeniably property in which that decedent has a "right, claim or interest." Thus, the double damages provision in § 14-3709(D) applies, and the trial court did not abuse its discretion in assessing double damages for the rents Dora withheld during administration of the estate.

IV. Disposition

¶39 For the foregoing reasons, we affirm. We award the estate reasonable attorney fees and costs, as requested pursuant to § 14-3709(D), upon compliance with Rule 21(c), Ariz. R. Civ. App. P.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge